

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Knight Analyst: Marion Mann DeJong Bill Number: SB 1222

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 04/20/1999

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Shift Burden Of Proof

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 7, 1999.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 7, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would shift the burden of proof to the Franchise Tax Board (FTB) in court proceedings for factual issues, for penalties and for adjustments to income based on statistical information. The burden of proof would not shift to the FTB for issues resulting from federal changes.

SUMMARY OF AMENDMENT

The April 20, 1999, amendments would require that the evidence introduced by the taxpayer be both relevant and material. Thus, for the burden of proof to shift to FTB for factual issues in court proceedings, the taxpayer must introduce credible evidence that is both relevant and material with respect to factual issues; and the taxpayer must:

- substantiate any item;
- keep records;
- cooperate with the FTB;
- exhaust all administrative remedies under California law, including any appeal to the BOE;
- meet net worth limitations (\$7 million) if not an individual taxpayer.

The amendments do not change the department's prior analysis. The Legislative History/Background and current law discussion in Specific Findings of the department's analysis of the bill as introduced February 26, 1999, still apply. In addition, the department's analysis of the bill as amended April 7, 1999, still applies. The Implementation Considerations and Board Position from the prior analysis are reiterated below.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Department/Legislative Director Date

Johnnie Lou Rosas **5/5/1999**

IMPLEMENTATION CONSIDERATIONS

Although this bill would require the taxpayer to maintain and present to FTB all records required under the law, current state law does not specifically require taxpayers to maintain records. Under current law FTB is not authorized to require most taxpayers to keep any records (books, papers, writings etc.), statements, returns or other information appropriate to determine the correct amount of tax reported on a tax return. Without legislation to conform to the federal record-keeping requirements, taxpayers potentially could shift the burden to the department by not maintaining records. Amendments conforming to the federal record-keeping requirements have been provided to the author's staff.

This bill could require FTB to engage in more extensive evidentiary gathering activities. Also, it may require personnel additions to the legal staff. Further, shifting the burden of proof to the department may require longer retention of records and increased departmental costs for storage.

BOARD POSITION

Pending.